WEB COPY

Bail Slip

The 2nd Appellant herein (viz) Rajendran, (Accused No.2) in SC.No.173/03 dated 16.12.2003 on the file of the Court of the Additional District & Sessions Judge (Fast Track Court No.II) Vridhachalam, was directed to be released on bail as per order of this Court dated 21.1.04 and made in Crl.MP.No.48/04 in CrlA.15/04

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 4.9.2006

Coram

THE HONOURABLE MR.JUSTICE R. BALASUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE V. DHANAPALAN

CRIMINAL APPEAL No.15 OF 2004

1. Ravichandran
2. Rajendran
3. Sujatha
4. Gunasekaran
5. Senthil
6. Balamurugan ..Appellants/Accused 1 to 6

-Vs.-

Inspector of Police
Thittakudi Police Station ...Respondent/Complainant

Appeal against the judgment dated 16.12.2003 made in S.C.No.173 of 2003 of on the file of Additional District & Sessions Judge (Fast Track Court No.III),Vridhachalam.

For Appellants : Mr.A.Padmanabhan

For Respondent : Mr. N.R.Elango, APP

---

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

J U D G M E N T

(Judgment of the Court was delivered by
R. Balasubramanian, J)

The appellants are the accused in S.C.No.173 of 2003 on the file of Additional Court of Sessions (Fast Track Court No.III), Vridhachalam. A.1 stands convicted under Section 302 I.P.C. for which he stands sentenced to undergo imprisonment for life together with a fine of Rs.3,000/- carrying a default sentence. A.2 stands convicted under Section 323 I.P.C. for causing simple injury on P.W.2, for which he stands sentenced to pay a fine of Rs.500/-. A.2 also stands convicted for the offence under Section 326 I.P.C. for causing grievous injury to P.W.2 for which he stands sentenced to undergo three years rigorous imprisonment together with a fine of Rs.1,000/- carrying a default sentence. A.3 stands convicted under Section 323 I.P.C. for causing a simple injury to P.W.3 for which he stands sentenced to pay a fine of Rs.300/-. A.4 stands convicted under Section 324 I.P.C., for which he stands sentenced to pay a fine of Rs.3,000/-. A.5 and A.6 also stand convicted under Section 324 I.P.C. for which each one of them stands sentenced to pay a fine of Rs.3,000/- each. Hence they are before this Court in this appeal. Heard Mr.A.Padmanabhan, learned counsel appearing for the appellants and Mr.N.R.Elango, learned Additional Public Prosecutor for the State.

2. The charges against the accused are under Section 148 I.P.C. (A.1,2,4 to 6); 147 I.P.C. (A.3); 302 I.P.C. (A.1); 302 read with 149 I.P.C. (A.2 to A.6); 323 I.P.C.(A.2); 307 I.P.C. (A.1); 323 I.P.C.(A.3) and 307 I.P.C.(A.4). The accused are acquitted of offences under sections 148, 147, 302 read with 149 and 307 I.P.C. but instead as already noted, the conviction is for the offences indicated earlier. The occurrence, according to the prosecution took place at 8.30 p.m. on 23.11.2002 by the accused forming themselves into members of an unlawful assembly attacked Vijayakumar fatally and the witnesses. To support their case, the prosecution examined P.Ws.1 to 12 besides marking Exs.P.1 to P.18 and M.Os.1 to 9. The defence did not let in either oral or documentary evidence.

3. P.W.1 is the elder brother of the deceased and he knows the accused. The prosecution party and the accused are residing in the same Village namely, Kizhseruvai. In the year 1991, rain water from the house of A.1 and one Madhavan were allowed to fall on the house of the prosecution party, resulting in a dispute. On that cause of action, a case is pending before the Assistant Sessions Court, Chidambaram. A.1, A.2 and the deceased had gone abroad. As a result of which, the sessions case could not proceed further. The deceased

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

after returning to India got the non-bailable warrant issued against him by the Court of Sessions,Chidambaram recalled. A.1 - who is the brother of A.2 returned to India from Singapore. There was a non-bailable warrant pending execution against A.1 and accordingly he was arrested and taken to Court. The deceased during the relevant time was affiliated to a leading political party and he was a panchayat union councillor . Sujatha, wife of A.2 was sarcastically commenting that the arrest of A.1 is only at the instance of the deceased. This was about 8.30 p.m. on 23.11.2002. The deceased's house is just opposite to A.2's house. P.W.1 was sitting outside the house. P.W.2 is P.W.1's mother. As P.W.1's younger brother by name Kalivanan had gone abroad, P.W.2 was staying in his house. She was also sitting outside. P.W.3 is the second wife of the deceased. She was also sitting outside her house. At that time Vijayakumar, since deceased came from Tittagudi in a Hero Honda motor cycle. On seeing him, A.3 commented that "as a member of the ruling party he is showing his arrogance and coming ". P.W.1 heard this. The deceased asked A.3 as to why she is saying like that. At that time, A.1 took an iron rod from A.3's house and came out. A.1 questioned the deceased as to why he is talking with A.3 and saying that with that he must be finished, attacked the deceased on his head. A.2 with a piece of wood measuring 3 feet in length attacked on the right hand of the deceased. The deceased could not lift his right hand. P.W.1, P.W.4 and P.W.2 ran towards the scene. A.2 fisted P.W.1 on his neck and P.W.1 fell down. P.W.2 was attacked by A.1 with the iron rod on her left hand. A.3 holding P.W.3 by her tuft assaulted her. P.W.3 fell down. A.4 beat P.W.4 on his head. A.5 stabbed on the thigh of the deceased with an iron rod. All the accused with the log of wood and iron rod repeatedly attacked Vijayakumar, since deceased on his chest, head and body. Vijayakumar was speech less. Injured Vijayakumar was taken to Tittagudi Police Station. The accused made good their escape. A medical memo was given in the police station for admitting Vijayakumar in the Government hospital at Tittagudi. A complaint was prepared. The duty doctor in the Tittagudi Government Hospital advised Vijayakumar to be taken to the Head Quarters Hospital. As they were proceeding towards Vridhachalam in a Car, Vijayakumar breathed his last. Then all of them returned to Tittagudi Police Station and took the dead body to the Government Hospital at Tittagudi. The dead body was kept in the mortuary. After 7.30 p.m. on 24.11.2002 the witnesses were examined. Ex.P.1 is the complaint given to him.

4. P.W.12 is the investigating officer. At 10.30 p.m. on 23.11.2002, P.W.1 appeared before him and gave a written complaint, which he registered in his police station crime No.326 of 2002 for offences under Sections 147, 148, 341, 294, 324 and 307 I.P.C. Ex.P.4 is the printed First Information Report. Along with the police medical memo 70 of 2002 Vijayakumar was sent by him to the Government Hospital at Tittagudi for treatment. A.1 appeared before

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

him at 10.30 p.m. and gave a complaint, which he registered in his police station crime No.327 of 2002 under Sections 147, 148, 294 and 324 I.P.C. He sent injured A.1 with a police medical memo to the hospital. P.W.12 received the information that Vijayakumar breathed his last on his way to the Government Head Quarters Hospital at Cuddalore and that the dead body was brought back to the Government Hospital at Tittagudi. He accordingly added Section 302 in the complaint already registered. Ex.P.5 is the altered First Information Report. Then he sent the altered Express Record through a police constable to the Court as well as to the higher officials. He reached the crime scene at 00.15 a.m. on 24.11.2002 in the presence of P.W.5 and another. He prepared Ex.P.6, the Observation Mahazar and Ex.P.7, the rough sketch. From the crime scene, he recovered M.Os.8 and 9 under Ex.P.2 attested by the same witnesses. He examined P.Ws.1,2,3,4 and others and recorded their statements. From 7.00 a.m. till 9.00 a.m. on 24.11.2002 he conducted inquest over the dead body in the presence of panchayatdars and witnesses. During inquest he examined P.Ws.1 to 4 and others and recorded their statements. Ex.P.8 is the inquest report. Then he sent a requisition to the hospital for conducting post-mortem.

5. P.W.10 is the police constable, who was present throughout post-mortem. The post-mortem was done between 12 noon and 2.00 p.m on 24.11.2002. After post-motem he removed M.Os.6 and 7 from the dead body and handed over the same to the investigating officer. The dead body was given by him to the relatives. P.W.11 is the duty doctor, who did post-mortem on the dead body of Vijayakumar. During post-mortem he found various symptoms as noted by him in Ex.P.14, the post-mortem report. Ex.P.15 is the requisition given by the Inspector of Police to conduct post-mortem. The symptoms noted by him are as hereunder:-

> " 1. Lacerated injury of 20 x 5 x bone depth over the Left side of head.
>
> 2. Contusion of 5 cm 3 cm over the Right fore arm. The Right side both nones found franctured.
>
> 3. Lacerated injury of 3 x 2 x bone depth over the middle third of right tibia. Right side tibia found fractured.
>
> 4. Lacerated injury of 3 x 2 x 1 cm over the right thigh.
>
> 5. Contusion of 6 cm x 5 cm x 3 cm on the left side axilla.
>
> 6. Contusion 15 x 10 x 2 cm over the opigastric region of abdomen.
>
> On opening the scalp the parietal temporal side of both side of skull bone found fractured. On opening the skull and meninges a huge heamatoma over right side of corebrum present. Hyoid bone intact. Other internal organs intact. Normal."

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

According to him death would have occurred 12-14 hours prior to autopsy, as a result of shock and haemorrhage due to head injury (brain) and fracture of right forearm and tibia right side. It is before P.W.11 on the previous night various injured appeared for treatment. At 10.40 p.m. on 23.11.2002 Vijayakumar was brought before him with a police medical memo by his wife for injuries shown to have been sustained by him at 8.30 p.m. on that night at the hands of eight persons by the use of a stick. P.W.11 found Vijayakumar unconscious and he was struggling for his breath. He referred him to the Government Head Quarters Hospital at Cuddalore since he had very serious wounds. At 11.30 p.m. on 23.11.2002 P.W.2 appeared before him for injuries shown to have been sustained by her at 8.30 p.m. on that night at the hands of a known person with the use of cart peg. On her he found various injuries as noted by him in Ex.P.16, the Accident Register. A lacerated injury of 5 cm x 2 cm x 1 cm on the centre of the head and a contusion 5 cm x 3 cm over the left forearm. Fracture of both bones was noticed. At 10.45 p.m. on 23.11.2002 P.W.4 appeared before him for injuries shown to have been sustained by him t 8.30 p.m. at the hands of a person by the use of an iron pipe. On him he found a lacerated injury of 6 cm x 3 cm x bone depth over the right side of fore head; a contusion of 5 cm x 3 cm x 1 cm over the left elbow and a contusion of 6 cm x 2cm x 1 cm below the left scapula. Ex.P.17 is the Accident Register. P.W.4 was treated as an out patient.

6. P.W.12 recovered the personal wearing apparel produced before him by P.W.10 the Police Constable under form 95/Ex.P.9. Photographs of the crime scene was taken by a photographer by name Kozhinji. Ex.P.10 series are the photographs and the negatives. P.W.12 examined witnesses in Crime No.327 of 2002 recorded by him and recorded their statements. Then he referred the complaint in Crime No.327 of 2002 (given by A.1) as a "mistake of fact". At 4.30 p.m. on 25.11.2002 near a petrol bunk at Elamangalam in Tittagudi-Ramanatham Main Road, he arrested A.1 and A.4 in the presence of P.W.5 and another.A.1 gave a voluntary confession statement at that time, the admissible portion of which is Ex.P.11. Pursuant to Ex.P.11, M.O.1, the iron rod and M.O.3, the wooden log came to be recovered at the instance of A.1 and A.4 under Ex.P.12. The arrested persons and the case properties were brought to the police station and the accused were sent for judicial remand. At 5.00 a.m. on 26.11.2002 P.W.12 arrested A.2,A.5 and A.6 in the presence of P.W.5 and another. A.2 gave a voluntary confession statement at that time, the admissible portion of which is Ex.P.3. Pursuant to Ex.P.3, at the instance of A.2, M.O.2, the iron rod and M.O.4, the wooden log came to be recovered under Ex.P.13 in the presence of the same witnesses. The arrested accused and the case properties were brought to the police station and the accused, were sent for judicial remand. At 1.00 p.m. on 2.12.2002 he arrested A.3 with the help of a lady Sub Inspector of Police and sent her for judicial remand.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

7. The evidence of P.Ws.2,3,4 and 6 regarding the occurrence proper is on the same lines as spoken to by P.W.1. P.W.5 witnessed the preparation of Ex.P.2, the Observation Mahazar; the arrest of A.2; his examination and recording of his confession statement, leading to the recovery as already spoken to by P.W.12. P.W.7 examined as an eye witness to the occurrence turned hostile. However before she came to be treated as hostile, she admitted that next to the house where Vijayakumar lives, is her house but however she is not living there. She would state that she lives ten houses away from Vijayakumar's house. P.W.8 and 9 are also examined as eye witnesses to the occurrence. However they did not implicate A.5 and A.6 in any manner in the occurrence. In all other aspects, their evidence is on the same lines as spoken to by P.Ws.1 to 4 and 6.

8. P.W.12 continued his investigation by examining witnesses and recording their statements. The case properties were sent to the Court with a requisition to subject the same for chemical examination. The personal wearing apparels removed from the dead body of Vijayakumar after post-mortem, were sent to the laboratory. Ex.P.8 is the Serologist's Report, which shows that those personal wearing apparels contain human blood. After completing the investigation and after complying with all the other legal formalities, P.W.12 filed the final report in Court against the accused on 6.1.2003 under Sections 147, 148, 323, 307 and 302 read with 149 I.P.C. When the accused were questioned under Section 313 of the Code of Criminal Procedure on the basis of the incriminating materials made available against each one of them, they denied each and every circumstance put up against them as false and contrary to facts. A.1 alone filed a separate written statement. It is a lengthy statement and therefore we extract hereunder as to what he stated in his statement.

> "P.Ws.1 to 4 and 6 are speaking falsehood; they have not made true disclosures about the crime; P.Ws.8 and 9 were not at the crime scene at all; P.W.12 the investigating officer is speaking false hood; neither A.1 nor A.2 gave any statement to him; at 8.30 p.m. on 23.11.2002, the deceased under the influence of alcohol came out of the house only wearing his inner wear and a banian; he was vulgarly abusing A.3 and the other women folk of the accused party; there has been a long standing enmity between the two families; a number of cases are pending; A.1 asked the deceased as to why he is talking like that; the deceased hit on A.1's head with an iron rod resulting in a bleeding injury; the deceased once again moved to attack A.1; A.1 picked up a cart peg available in the pial of his house and hit him on his

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

head once; the deceased again attempted to attack A.1 and at that time A.2 with a stick in his hand pushed aside the iron rod in the hand of Vijayakumar, since deceased; luckily A.1 survived; P.W.4 attacked A.2 indiscriminately with a log of wood; P.W.2 and P.W.3 holding A.3 by her tuft handled her forcibly; A.3 with a view to get out of the hold, pushed P.W.2 resulting in P.W.2 falling to the ground; nobody beat P.W.2; A.2 beat P.W.1; A.5 and A.6 were not on the crime scene at all. In the complaint given by P.W.1; at the first time the names of A.5 and A.6 were not there; A.4 did not attack any body; he has been falsely implicated; at 10.30 p.m. A.1 went to the investigating police station with a bleeding injury and gave a complaint; P.W.1 also gave a complaint; P.W.12 sent A.1 to the hospital for treatment; A.2 also was in the police station with injuries; however he was detained in the police station itself; the Doctor advised A.1 to go to the Government Head Quarters Hospital at Cuddalore; by that time P.W.12 received the information that Vijayakumar died; therefore P.W.12 did not allow A.1 to go to the Government Head Quarters Hospital at Cuddalore; A.1 and A.2 were detained in the police station itself; A.2 was not sent for treatment to the hospital; A.1 was sent for judicial remand two days later; A.2 continued to be in the police station; supporters of the accused staged dharna opposite to the police station two days later and it is only then A.2 was sent for treatment to the hospital and then for judicial remand; P.W.12 had not communicated the result of investigation to A.1 on the complaint given by him; A.1 had also not received any notice from the Court in regard thereto; A.1 and A.2 acted only in self defence; the accused party did not begin the quarrel; between the prosecution party and the accused there has been enmity for the last ten years and therefore suppressing the truth they have given false information; Saraswathy and Alamelu are eye witnesses to the crime and they have not been examined; if they had been examined, truth would have come out."

As noted earlier, neither oral nor documentary evidence was brought before Court at their instance.

9. Mr.A.Padmanabhan, learned counsel appearing for the appellants would contend that the investigation in this case is a biased one in favour of the prosecution party. The investigating

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

Officer, though had sent A.1 for treatment with the medical memo, had not taken care to produce the Accident Register or the Wound Certificate for A.1 in Court. Likewise, the treatment given to A.2 also at the instance of the police officer had been withheld. On top of this, not only the complaint given by the first accused to him and registered in Crime No.327 of 2002 had been suppressed but also the final report on that complaint is also held back. Though the occurrence could have taken place, yet, it did not take place in the manner as spoken to by the prosecution. Injuries on A.1 and A.2 had not been explained at all. Though the failure to explain the injuries on the accused is not fatal in each and every case, yet, how far such failure would affect the prosecution case would depend upon the facts available in each case. Therefore learned counsel for the appellants would state that the prosecution is suppressing the very origin of the case and giving that benefit, the accused may be acquitted. Mr.N.R.Elango, learned Additional Public Prosecutor would admit that the witnesses did not explain the injuries found on A.1 and A.2. At the same time, the accused themselves by cross examining P.W.11 had got answers that he treated them for injuries. According to the learned Additional Public Prosecutor, the accused should have gone one step further by asking the Doctor to produce the Accident Register/Wound Certificates for A.1 and A.2. Since they have not done, they cannot blame the prosecution for not explaining the injuries stated to have been caused on A.1 and A.2. According to him, unless the accused discharges his burden, the prosecution cannot be faulted at all. For this purpose, learned Additional Public Prosecutor relies upon a judgment of the Supreme Court reported in 2003 S.C.C.(Criminal) Page 1697 (SUCHA SINGH v. STATE OF PUNJAB). As far as the investigation in the complaint shown to have been given by A.1 is concerned, learned Additional Public Prosecutor states that the said complaint stands registered in Crime No.327 of 2002 and P.W.12 had given evidence that he had referred the case as a "mistake of fact". According to him, this is more than sufficient compliance of the requirements of law.

10. Having regard to the arguments advanced by the learned counsel on eitehr side, we went through the records. The fact remains that Vijayakumar died due to homicidal violence. Ex.P.14 is the post-mortem certificate. P.W.11 is the doctor, who did post-mortem. Therefore we hold that the prosecution had definitely established that Vijayakumar died due to homicidal violence. P.W.11 had also examined P.W.2 and P.W.4. Ex.P.16 and P.17 are the Accident Registers. A.2 stands convicted under Section 326 I.P.C. for causing a grievous injury to P.W.2. Ex.P.16 shows that P.W.2 had suffered fracture of both bones. Ex.P.16 also shows that the patient was referred to the Government Head Quarters Hospital,Cuddalore for ortho opinion. P.W.11 admitted that X-rays of P.W.2 were taken only in the Government Head Quarters Hospital at Cuddalore and he did not see the X-rays at all. But however, he had seen the report

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

of the Radiologist. The Radiologist's report is not exhibited at all. He would also state that the injuries found on P.W.2 could be due to a fall also. Neither the orthopaedician, who treated P.W.2 nor the Radiologist, who had taken X-rays for P.W.2 have been examined. The X-rays are also not marked. Under these circumstances, we are at a loss to understand as to how P.W.11 in Ex.P.16 could state that P.W.2 had suffered fracture of both bones in the left forearm. Assuming the prosecution had succeeded in establishing the guilt of A.2 in causing hurt to P.W.2, his conviction cannot be under Section 326 I.P.C. We leave it as it is. To sum up, at this stage, we hold that the prosecution had definitely established that Vijayakumar died due to homicidal violence; P.W.4 received simple injuries and P.W.2 had also received injuries. P.Ws.2 and 4 had given evidence about the manner in which they had come to sustain the injuries. Their evidence is supported by the evidence of P.W.11. But however there is no medical evidence to show that P.W.2 had suffered any grievous injury.

11. Now let us examine the question as to whether the prosecution is guilty of suppressing the truth/ the origin of the case and if it is so, how far it would affect their case. There is no dispute that P.Ws.1 to 4 and 6 have given evidence in uniformity namely, as to how Vijayakumar and the witnesses have come to sustain the injuries. P.Ws.8 and 9 had also given evidence regarding the involvement of A.1 to A.4. There is no charge at all against A.5 and A.6 for having caused any injury on any of the witnesses. P.Ws.8 and 9 also do not speak about the involvement of A.5 and A.6 in causing any injury to any of the witnesses. Therefore the conviction of A.5 and A.6 under Section 324 I.P.C. is without a charge at all against them. On that short ground, the conviction of A.5 and A.6 under section 324 I.P.C. has to be necessarily set aside. In addition to the above we find from the evidence of P.Ws.8 and 9 that they did not implicate A.5 and A.6 in the crime. Therefore giving the benefit of their evidence and also absence of any charge against A.5 and A.6 under section 324 I.P.C, we have no hesitation at all in setting aside the judgment under challenge convicting A.5 and A.6 under Section 324 I.P.C. and accordingly they stand acquitted the said offence. Fine amount, if any paid by them, for that conviction would be refunded to them.

12. Let us go back to the original question namely, whether the prosecution case could be believed. As noted earlier, if the evidence of P.Ws.1 to 4, 6, 8 and 9 had to be believed at their face value without any suspicion, then there is no difficulty at all in confirming the conviction. But that does not appear to be the case here. We state the reasons for that hereunder:

> "P.W.11 admitted that at 10.50 p.m. on 23.11.2002 A.1 appeared before him with a police

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

medical memo for treatment. He found injuries on him. A.1 told P.W.11 that he had suffered an injury on the head at about 8.30 p.m. on that night at the hands of four persons by the use of iron rods. P.W.11 also admitted that on 26.11.2002 A.2 appeared before Dr.Mahesh in the Government Hospital at Tittagudi and the said Dr.Mahesh treated A.2. P.W.11 knows the handwriting of Dr.Mahesh, who had noted that A.2 had suffered a contusion on the right hand; a contusion and an injury on the right forehand and a contusion and an injury on the right shoulder. Dr.Mahesh was informed that A.2 had received the injuries at 8.30 p.m. on 23.11.2002 by the use of a wooden log by two known persons and A.2 also was referred to the Government Head Quarters Hospital at Cuddalore by Dr.Mahesh. P.Ws.1 to 4,6,8 and 9 denied any knowledge at all as to how A.1 and A.2 had come to receive injuries. The defence did not leave the matter there. But they made a probing cross examination of P.W.12, the investigating officer.

P.W.12 while he was so cross examined admitted as hereunder:-

> "A.1 gave a complaint stating that he received the injuries at 8.30 p.m. on the night of 23.11.2002; I examined P.Ws.1 to 4 and 6 as to how A.1 had come to sustain the injuries; A.2 was complaining of pain and I sent him for treatment; I did not get the Accident Register for A.2 from the Doctor, who examined him; I examined P.Ws.1 to 4 and 6 regarding the injuries found on A.1'; however the witnesses spoke only about the injuries found on their person only; I deny that I have not examined P.Ws.1 to 4 and 6 on the complaint given by A.1 and the injuries found on him."

Therefore it is clear that P.Ws.1 to 4 and 6 have not only denied in Court any knowledge about the injuries found on A.1 and A.2 but they also kept a total silence on those material aspects when they were examined by the police during investigation.

13. In this context we will usefully refer to the judgment of the Supreme Court brought to our notice by the learned Additional Public Prosecutor namely, 2003 S.C.C.(Crl.) page 1697. The Honourable Judges after extracting the case laws on the issue namely, how far the failure to explain the injuries found on the accused by the prosecution vitiates the prosecution case, had stated the position in law as hereunder:-

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

"24. One of the pleas is that the prosecution has not explained the injuries on the accused. The issue is, if there is no such explanation what would be its effect? We are not prepared to agree with the learned counsel for the defence that in each and every case where the prosecution fails to explain the injuries found on some of the accused, the prosecution case should automatically be rejected, without any further probe. In Mohar Rai v. State of Bihar it was observed :(AIR p.1284, para 6)

> "In our judgment , failure of the prosecution to offer any explanation in that regard shows that evidence of the prosecution witnesses relating to the incident is not true or at any rate not wholly true. Further those injuries probabilise the plea taken by the appellants."

In another important case Lakshmi Singh v. State of Bihar after referring to the ratio laid down in Mohar Rai case this Court observed: (SC p.401 para 12)

> "(W)here the prosecution fails to explain the injuries on the accused, two results follow: (i) that the evidence of the prosecution witnesses is untrue; and (ii) that the injuries probabilise the plea taken by the appellants."

It was further observed that (SCC p.401, para 12)

> "(I)n a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:
>
> (1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;
>
> (2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;
>
> (3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.
>
> The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one."

25. In Mohar Rai case it is made clear that failure of the prosecution to offer any explanation regarding the injuries found on the accused may show that the evidence

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

related to the incident is not true or at any rate, not wholly true. Likewise in Lakshmi Singh case it is observed that any non-explanation of the injuries on the accused by the prosecution may affect the prosecution case. But such a non-explanation may assume greater importance where the defence gives a version which competes in probability with that of the prosecution. But where the evidence is clear, cogent and creditworthy and where the Court can distinguish the truth from falsehood, the mere fact that the injuries are not explained by the prosecution cannot by itself be a sole basis to reject such evidence, and consequently, the whole case. Much depends on the facts and circumstances of each case. These aspects were highlighted by this Court in Vijayee Singh v. State of U.P.

26. Non-explanation of injuries by the prosecution will not affect the prosecution case where injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it outweighs the effect of the omission on the part of the prosecution to explain the injuries. As observed by this Court in Ramalagan Singh v. State of Bihar the prosecution is not called upon in all cases to explain the injuries received by the accused persons. It is for the defence to put questions to the prosecution witnesses regarding the injuries on the accused persons. When that is not done, there is no occasion for the prosecution witnesses to explain any injury on the person of an accused. In Hare Krishna Singh v. State of Bihar it was observed that the obligation of the prosecution to explain the injuries sustained by the accused in the same occurrence may not arise in each and every case. In other words, it is not an invariable rule that the prosecution has to explain the injuries sustained by the accused in the same occurrence. If the witnesses examined on behalf of the prosecution are believed by the Court in proof of guilt of the accused beyond reasonable doubt, question of obligation of the prosecution to explain injuries sustained by the accused will not arise. When the prosecution comes with a definite case that the offence has been committed by the accused and proves its case beyond any reasonable doubt, it becomes hardly necessary for the prosecution to again explain how and under what circumstances injuries have been inflicted on the person of the accused. It is more so when the injuries are simple or superficial in nature. In the case at hand, trifle and superficial injuries on the accused are of little assistance to them to throw doubt on the veracity of the

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

prosecution case, particularly, when the accused who claimed to have sustained injuries has been acquitted."

Heavily relying upon para 26 of the judgment (extracted above) namely " it is for the defence to put questions to the prosecution witnesses regarding the injuries on the accused persons and when that is no done, there is no occasion for the prosecution witnesses to explain any injury on the person of the accused," it is contended by the learned Additional Public Prosecutor that the defence had just questioned P.W.11 on the injuries found on A.1 and A.2. This is not enough and they must go one step further and have the Accident Register/Wound Certificates of the respective accused marked in this case through the said doctor. In our opinion, the observations of the Supreme Court in the above paragraph must not be read in isolation but must be read in the entirety of the facts available. In this case, the defence had definitely questioned P.W.11, who would state that, after initial treatment of A.1 and A.2 at Tittagudi, A.2 was referred to the Government Head Quarters Hospital at Cuddalore. In the above referred to judgment the Supreme Court found that the injuries on the accused were trifle and superficial injuries and therefore it is of little assistance to throw doubt on the veracity of the prosecution case especially when the accused, who claimed to have sustained the injuries have been acquitted. In other words, in that case materials have come on record to show that the accused had suffered only trifle and superficial injuries. In this case, P.W.11's evidence shows that A.2 had suffered contusions and injuries on the head. A.1 had stated in his written statement that he was also referred to the Government Head Quarters Hospital at Cuddalore for better treatment. If really the injuries on A.1 and A.2 are trifle and superficial in nature, we find no reason at all as to why both of them should be referred to the Government Head Quarters Hospital at Cuddalore for better treatment. This only shows that A.1 and A.2 could not have suffered superficial injuries but on the other hand more serious injuries which deserve better medical attention. If really the prosecution wanted to succeed on the ground that A.1 and A.2 had suffered only superficial injuries then a duty is cast upon the investigating officer to get those medical records and exhibit it before Court. It is the police officer, who sent A.1 and A.2 for treatment with police medical memos. Therefore a greater responsibility lies on P.W.12 to get the Accident Register/Wound Certificates for A.1 and A.2; file it before Court and then contend that those injuries being simple/superficial in nature, no duty is cast upon the prosecution to explain those injuries and in any event, failure to explain those superficial injuries would not affect the prosecution case. In this case P.W.12 had clearly omitted to do the legal duty, which is expected from him. In other words, if he is a fair minded investigating officer, he would not have failed to produce those exhibits in Court. On top of this he had also not exhibited the

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

complaint registered by him in Crime No.327 of 2002 filed by A.1 and the connected records.

14. This Court has been repeatedly holding that when there is a case and counter the investigating officer has to investigate both the complaints in a manner known to law and file the final report in one case and exhibit the materials collected by him during investigation in the connected complaint before the Court, leaving the entire issue namely, which is true or false to be decided by the Court. This is not done in this case namely, the complaint given by A.1 is not marked; the statement of witnesses recorded during investigation on that complaint is not marked and on top of it the final report is also not marked. Therefore it appears that the police officer namely, P.W.12 holding back the entire records with him, wants the Court to believe his evidence, that the complaint given by A.1 is false and therefore it deserved to be rejected, as a gospel truth. The police officer is only an investigating officer and he is not the adjudicator. On the other hand it is for the Court to decide which complaint is true and who are the aggressors. In this context, there is some useful material on record. P.W.12 admitted that Saraswathy and Alamelu are eye witnesses to the occurrence and he had examined them. He had also admitted that he had sent their statements to the Court along with the final report. He had admitted that Saraswathy and Alamelu told him during investigation that it was a free for all situation at the occurrence time. This material that came through the mouth of Saraswathy and Alamelu is admitted by P.W.12. This answer is more than sufficient to hold that there should have been free for all fight at the occurrence time. P.W.12 had not chosen to examine Saraswathi and Alamelu and the reasons are not far off to be seen. P.W.1 is the elder brother of the deceased. P.W.2 is the mother of P.W.1 and the deceased. P.W.3's husband is the younger brother of P.W.1. P.W.4's mother is the sister of P.W.1. The deceased is the junior paternal uncle of P.W.6. P.W.1 had married P.W.8's elder sister. P.W.9's wife is the elder sister of P.W.1's wife. Therefore all the eye witnesses and the deceased are thickly related. There is a long standing enmity between the prosecution party and the accused. On these facts, non-examination of Saraswathi and Alamelu, in the context of the disclosures made by them during investigation assumes importance. In this context the stand of the first accused taken by him in his written statement filed at the end of questioning appears to be more probable than the prosecution case. The Supreme Court as early as in the year1976 in the case reported in 1976(4)S.C.C. 394 (LAKSHMI SINGH v. STATE OF BIHAR) held that when the origin of the prosecution case is suppressed, then the prosecution case must fail. In this case for more than one reason, we find that the the prosecution is definitely guilty of suppressing the origin of the case.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

15. For all the reasons stated we find that the prosecution is suppressing the origin of the case and therefore it is not possible for us to find out where exactly the truth lies?. The doubts in our mind are not speculative doubts or doubts on mere surmises and conjectures, but it is based on sound principle of appreciation of evidence. Consequently giving the benefit of doubt in our mind to the accused, we set aside the judgment under challenge and acquit the accused of the various offences for which they were charged tried and convicted. Fine amount if any paid by each of the accused for the various offences is directed to be refunded to them. A.2 and A.3 are stated to be on bail. Their bail bonds would stand terminated forthwith. A.1 is stated to be in jail. He is directed to be released forthwith, unless his detention is required in connection with any other case. Consequently, the appeal is allowed.

Tr/ Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Additional District & Sessions Judge
Fast Track Court No.III, Vridhachalam.

2. -do- Through the Principal Sessions Judge
Cuddalore.

3. The District Collector, Cuddalore.

4. The Director General of Police, Chennai.

5. The Public Prosecutor,
High Court, Chennai-104.

6. The Superintendent
Central Prison, Cuddalore.

7. The Inspector of Police, Tittagudi Police Station.

+ 1 cc to Mr. A. Padmanabhan, Advocate SR No. 41014

GM(CO)
SR/4.10.2006 Crl.A.No.15/2004

https://hcservices.ecourts.gov.in/hcservices/